

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION

In Re:

BRUCE E. BOZZI, SR.,

Case No. 9:19-bk-09677-FMD

Debtor. _____ /

**AMENDED MOTION TO SELL PROPERTY OF THE ESTATE
FREE AND CLEAR OF PURPORTED LIENS AND INTERESTS**

A preliminary hearing in this case will be held on **January 23, 2020 at 9:30 a.m.** in Fort Myers Federal Building and Federal Courthouse, Room 4-117, Courtroom E, 2110 First Street, Fort Myers, Florida 33901 to consider and act upon the following or this matter and transact such other business that may come before the Court: **Motion to Sell Property of the Estate Free and Clear of Purported Liens and Interests.**

1. The hearing may be continued upon announcement made in open court without further notice.
2. Appropriate Attire – You are reminded that Local Rule 5072-1(b)(16) required that all persons appearing in court should dress in business attire consistent with their financial abilities. Shorts, sandals, shirts without collars, including tee shirts and tank tops, are not acceptable.
3. Avoid delays at courthouse security checkpoints. You are reminded that Local Rule 5073-1 **restricts the entry of cellular telephones** and, except in Orlando, computers into the courthouse absent a specific order of authorization issued beforehand by the presiding judge. Due to heightened security procedures, persons must present photo identification to enter the courthouse.

COMES NOW the Trustee in the above-styled case, ROBERT E. TARDIF JR., and files this Motion to Sell Property of the Estate Free and Clear of Liens and Interests and moves this Court pursuant to 11 U.S.C. §§ 105 and 363(f) and Rule 6004 for entry of an Order authorizing the sale of property of the estate by private sale free and clear of liens and interests and states as follows:

1. The Debtor filed this bankruptcy case and Robert E. Tardif Jr., has been appointed as Trustee to administer the case.
2. **Property:** Trustee proposes to sell the bankruptcy estate's interest in the following property: **37 Cottage Avenue, East Hampton, New York 11937**. The Debtor owned a one-half interest in the property and his spouse, Mary Ann Bozzi, owns one-half of the property. The property is slightly less than one acre and is improved with a residential home.
3. **Purchaser:** The proposed purchaser is Blaine Lourd, Trustee of the 37 Cottage Avenue Trust, or its permitted assigns or designees. To the Trustee's knowledge, the owners/beneficiaries of the trust are Bruce E. Bozzi, Jr., and Bryan Lourd, who are the Debtor's son and son-in-law, respectively. Notwithstanding the purchaser's connection to the Debtor, the Trustee believes that

he is receiving fair and adequate consideration as noted below. The proposed purchaser has attested that the funds being used to purchase the property do not originate directly or indirectly from the Debtor.

4. **Price:** The selling price is \$5,000,000.00. The Trustee has not had the property appraised. The Trustee did receive a broker's opinion that reflected a recommended list price between \$5,000,000.00 and \$5,300,000.00 and a probable final sale amount after a three- to six-month sale period of between \$4,800,000.00 and \$5,150,000.00. The broker has substantial experience marketing properties in the area where this property is located. The broker has/had no connection to the Debtor or the purchaser. The Trustee, after due diligence, believes the selling price is fair and reasonable.

5. The following Parties in Interest appear to have an interest in the properties to be sold by the Trustee: Mary Ann Bozzi, the Debtor's spouse has a one-half ownership interest in the net proceeds.

6. Section 363(f) of the Bankruptcy Code provides, in pertinent part, that: "the trustee may sell property . . . free and clear of any interest in such property and of an entity other than the estate, only if – (2) such entity consents; or (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; or (4) such interest is in bona fide dispute;"

7. Section 363(h) of the Bankruptcy Code provides, in pertinent part, that "the trustee may sell both the estate's interest, . . . and the interest of any co-owner in property" if partition is impracticable, sale of the estate's undivided interest would realize significantly less and the benefit to the estate outweighs the detriment, if any, to any co-owners.

8. With regard to the above Parties in Interest, the Trustee believes that the necessary requirements for a sale free and clear of liens and interests exist by stating the following: **Mary Ann Bozzi** – This Party in Interest has a one-half interest in the property and is the Debtor's spouse. Mrs. Bozzi consents to the sale of the property so the Court can approve the sale pursuant to Section 363(f)(2). Moreover, even in the absence of consent, the Trustee believes that the Court may approve this proposed sale pursuant to Section 363(h) as the conditions set forth in that Section are met.

9. The sale of the property free and clear of liens of the above-named individuals and entities is in the best interests of the Debtors' estate, its creditors and other parties in interest.

10. **Terms:** The property is being sold "AS IS, WHERE IS WITH ALL FAULTS AND DEFECTS THEREIN" with no representations or warranties of any kind.

11. **Benefit to Estate:** The Trustee believes the net sales proceeds to the estate will be approximately \$2,450,000.00. The Trustee believes that the net proceeds that would be realized by this proposed sale are approximately the same or higher than the net proceeds that would be received after marketing the property through a broker since such a sale would include a sales commission.

12. **Payments at Closing:** The Trustee expects to pay the following undisputed liens, interests, claims or costs at the closing:

- a. Reasonable and customary closing costs to the Trustee and Mrs. Bozzi, as Sellers, which may include the following:
 - i. Seller's Legal Fees (Estimated at Approximately) \$ 3,500.00
 - ii. Title/Recording Fees (Approximately) \$ 1,800.00
 - iii. Reasonable and customary closing costs not to exceed \$ 1,000.00
 - iv. Transfer Tax Document Preparation \$ 475.00
 - v. Transfer Tax (State and/or County) \$ 20,000.00
- b. Mary Ann Bozzi – After payment of the customary closing costs noted above, one-half of the net sales proceeds, which the Trustee estimates as approximately \$2,450,000.00.
- c. A true and accurate copy of an estimated net sheet or closing statement is attached to this motion.

13. **Request to Waive Stay:** At the hearing on this motion the Trustee will request that the Court enter an order waiving the 14-day stays set forth in Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure and providing that the order granting this motion be immediately enforceable and that the closing under the purchase agreement may occur immediately.

WHEREFORE the Trustee moves the Court for entry of an Order authorizing the sale of the above-described property free and clear of liens and interests pursuant to Section 363(f) or (h), in accordance with the terms stated herein.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished **Electronically** to the Assistant United States Trustee, Robert A. Schatzman and those appearing in this case who are registered with CM/ECF and by **Regular U.S. Mail** to Bruce E. Bozzi, Sr., and Mary Ann Bozzi, 2161 Gulf of Mexico Drive, Longboat Key, FL 34228 and those creditors and parties in interest on the attached matrix on January 13, 2020 that are required to be served pursuant to Local Rule 2002-1(c).

/s/ Robert E. Tardif Jr.
Robert E. Tardif Jr., Esquire
P.O. Box 2140
Fort Myers, Florida 33902
Telephone: 239/362-2755
Facsimile: 239/362-2756
Email: rtardif@comcast.net

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower: Blaine Lourd, as Trustee of 37 Cottage Avenue Trust	E. Name & Address of Seller: Robert E. Tardif Jr., Trustee for Bruce E. Bozzi, Sr.	F. Name & Address of Lender:
G. Property Location: 37 Cottage Avenue East Hampton, New York	H. Settlement Agent: Place of Settlement:	I. Settlement Date:

J. Summary of Borrower's Transaction

100. Gross Amount Due from Borrower	
101. Contract sales price	\$5,000,000.00
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. Gross Amount Due from Borrower	
200. Amount Paid by or in Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. Total Paid by/for Borrower	
300. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220)	()
303. Cash <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower	\$5,000,000.00

K. Summary of Seller's Transaction

400. Gross Amount Due to Seller	
401. Contract sales price	\$5,000,000.00
402. Personal property	
403.	
404.	
405.	
Adjustment for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due to Seller	
500. Reductions In Amount Due to seller	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	\$22,350.00
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. Total Reduction Amount Due Seller	
600. Cash at Settlement to/from Seller	
601. Gross amount due to seller (line 420)	
602. Less reductions in amounts due seller (line 520)	()
603. Cash <input checked="" type="checkbox"/> To <input type="checkbox"/> From Seller	\$4,977,650.00

702. \$	to	Settlement	Settlement
703. Commission paid at settlement	704.		
704.			

800. Items Payable in Connection with Loan			
801. Our origination charge	\$	(from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen	\$	(from GFE #2)	
803. Your adjusted origination charges		(from GFE #A)	
804. Appraisal fee to		(from GFE #3)	
805. Credit report to		(from GFE #3)	
806. Tax service to		(from GFE #3)	
807. Flood certification to		(from GFE #3)	
808.			
809.			
810.			
811.			

900. Items Required by Lender to be Paid in Advance			
901. Daily interest charges from	to	@ \$	/day (from GFE #10)
902. Mortgage insurance premium for	months to		(from GFE #3)
903. Homeowner's insurance for	years to		(from GFE #11)
904.			

1000. Reserves Deposited with Lender			
1001. Initial deposit for your escrow account		(from GFE #9)	
1002. Homeowner's insurance	months @ \$	per month \$	
1003. Mortgage insurance	months @ \$	per month \$	
1004. Property Taxes	months @ \$	per month \$	
1005.	months @ \$	per month \$	
1006.	months @ \$	per month \$	
1007. Aggregate Adjustment		-\$	

1100. Title Charges			
1101. Title services and lender's title insurance		(from GFE #4)	
1102. Settlement or closing fee	\$		
1103. Owner's title insurance		(from GFE #5)	
1104. Lender's title insurance	\$		
1105. Lender's title policy limit \$			
1106. Owner's title policy limit \$			
1107. Agent's portion of the total title insurance premium to	\$		
1108. Underwriter's portion of the total title insurance premium to	\$		
1109. Title & Recording Fees/Title Closer Attendance			\$1,800.00
1110.			
1111.			

1200. Government Recording and Transfer Charges			
1201. Government recording charges		(from GFE #7)	
1202. Deed \$	Mortgage \$	Release \$	
1203. Transfer taxes		(from GFE #8)	
1204. City/County tax/stamps	Deed \$	Mortgage \$	
1205. State tax/stamps	Deed \$	Mortgage \$	\$20,000.00
1206. Transfer Document Preparation			\$475.00

1300. Additional Settlement Charges			
1301. Required services that you can shop for		(from GFE #6)	
1302.	\$		
1303.	\$		
1304.			
1305.			

1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			\$22,350.00
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Label Matrix for local noticing
113A-9
Case 9:19-bk-09677-FMD
Middle District of Florida
Ft. Myers
Mon Jan 13 08:51:29 EST 2020

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